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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
Petition of Bell Atlantic Telephone)
Companies for Forbearance from Regulation)
as Dominant Carriers in Delaware;)
Maryland; Massachusetts; New Hampshire;)
New Jersey; New York; Pennsylvania;)
Rhode Island; Washington, D.C.; Vermont;)
and Virginia.)

CC Docket No. 99-24

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COMMENTS OF NETWORK PLUS, INC.

Network Plus, Inc. ("Network Plus"), by its undersigned counsel and pursuant to the Commission's Public Notice, DA 99-224, hereby submits the following comments in response to Bell Atlantic Telephone Companies ("Bell Atlantic") petition seeking forbearance from regulation as dominant carriers in their provision of special access services in 12 jurisdictions within their service areas.¹ Network Plus opposes Bell Atlantic's Petition and urges the Commission to reject Bell Atlantic's request. Bell Atlantic fails to demonstrate that the current access services marketplace satisfies the requirements of Section 10 of the Communications Act of 1934, as amended, ("Act"), which is necessary for the Commission to forbear from regulation. Without supporting documentation or explanation for the methodologies used to arrive at its conclusions, Bell Atlantic's arguments cannot be taken as more than pure speculation. Thus, Bell Atlantic's Petition does not warrant forbearance and the Commission should reject the Petition accordingly.

¹ The jurisdictions covered by Bell Atlantic's Petition include: Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York (including the Greenwich, Connecticut service area); Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia.

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List A B C D E

I. WITHOUT RELIABLE SUPPORTING DOCUMENTATION AND DATA, THE COMMISSION CANNOT DRAW THE NECESSARY CONCLUSIONS REQUIRED BY SECTION 10 OF THE ACT

Forbearance from rate regulation is only warranted where Commission regulation is: (1) not necessary to ensure that these rates are just and reasonable and are not unjustly or unreasonably discriminatory; (2) not necessary to protect consumers; and (3) forbearance is in the public interest.² Bell Atlantic must demonstrate that the *current* special access services market satisfies these requirements set forth in Section 10 of the Act. To meet these requirements, Bell Atlantic must demonstrate that it does not continue to exercise market power in the special access services market.³ Bell Atlantic must also demonstrate that forbearance from rate regulation for its special access services will promote competitive market conditions.⁴ As shown below, Bell Atlantic fails to meet the mandated requirements by neglecting to provide reliable data and documentation to support its claims that the requirements necessary to warrant forbearance exist. Thus, Bell Atlantic's Petition amounts only to a lot of speculation and must be denied for failing to meet the requirements necessary to support Commission forbearance.

A. Enforcement of Rate Regulation is Necessary to Ensure that Rates and Practices are Just and Reasonable and Not Unjustly or Unreasonably Discriminatory

Bell Atlantic claims that it does not have market power in special access services and, therefore, price regulation is not necessary to ensure just and reasonable rates. BA Petition at 5. Bell

² 47 U.S.C. § 160(a).

³ *In Re Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd. 3271 (1995).

⁴ 47 U.S.C. § 160(b).

Atlantic argues that it “lacks market power because the vast majority – approximately 90 percent – of its special access customers have a competitive alternative available through an array of competitive facilities.” BA Petition at 5. To support this conclusion, Bell Atlantic cites to a Report by Quality Strategies, Inc. (“Report”), which, *according to Bell Atlantic*, states that competitors have “won over 30% of the high capacity special access business, and as much as 50% in key business centers.” BA Petition at 7 (citing Attachment C, ¶ 36). Bell Atlantic’s citation to a calculation derived from an unknown, unsubstantiated source is simply not enough. Bell Atlantic fails to attach the Report that serves as the basis for this calculation. Bell Atlantic also fails to provide any information in its Petition or the corresponding attachments that explains how the data was derived to establish this calculation. Without the proper documentation or underlying analysis, it is impossible to determine the merits of Bell Atlantic’s conclusion.

In further support of its claim that it does not maintain market power, Bell Atlantic states that “competitors with collocation or their own fiber can reach between 82 and 100% of the Bell Atlantic special access demand in the states covered by [the] Petition.” BA Petition at 6. Bell Atlantic again fails to sufficiently explain the basis for this calculation. Bell Atlantic provides no data on the extent to which competitors have actually served as competitive alternatives to Bell Atlantic in the provision of special access services.

Throughout its Petition, Bell Atlantic claims, with respect to the special access services, that there is a high degree of “addressability—the ability of a competitor to reach current customers.” BA Petition at 6 n.5. The ability to reach customers does not satisfy the requirement that Bell Atlantic lacks market power. It is a reality that Bell Atlantic must prove to demonstrate that it no longer wield control over the access service market. Bell Atlantic fails to provide any specific data on the

extent to which competitors actually can and have reached Bell Atlantic's current customers. The reality of the marketplace is that competitors have not reached special access consumers due to many roadblocks including high termination costs, limited coverage by competitors' facilities, and Bell Atlantic's continued control over bottleneck facilities and failure to fully open its markets to competition.

Bell Atlantic's classification of a "competitive" wire center as a measure of competition is another example of unsubstantiated conclusions. The Affidavit of Robert J. McDonnell (included as Attachment A to the Petition) states that the wire centers where competitors have collocated facilities or that are served by competitors' facilities are classified as "competitive" wire centers. McDonnell Affidavit at 3. As indicated in Bell Atlantic's Petition, collocated facilities include Bell Atlantic wire centers where there are operational collocation facilities, collocation facilities that are completed and waiting for occupancy, and collocated facilities that have been ordered and are under construction. McDonnell Affidavit at 2 n.1. Bell Atlantic's data, however, does not distinguish between facilities that are actually collocated and operational and therefore, barring other barriers, may have the ability to serve customers, versus those facilities that are still waiting for occupancy or completed construction, and therefore, currently have no ability to actually serve customers. Assuming that, as Bell Atlantic claims, collocation is an actual measurement of competitive alternatives, this measurement is without merit if it includes facilities that are not yet capable of providing service to customers as a competitive alternative to Bell Atlantic.⁵ Again, Bell Atlantic

⁵ Bell Atlantic's reliance on collocation as a primary measure of competition fails to consider other factors that can prevent collocated carriers from providing equivalent services to Bell Atlantic customers. These factors include the availability of additional collocation space to already collocated or new competitors, and the ability to obtain key section 251 network features and

fails to prove that the “reality” of the marketplace supports forbearance. Rather, Bell Atlantic’s theoretical “addressability” is offered, which is simply not enough to satisfy the mandates of Section 10 of the Act.

In attempting to satisfy the forbearance requirements, Bell Atlantic draws sweeping conclusions regarding the status of competition in the special access services market, yet does not provide supporting data or explain the methodologies used to reach its conclusions. The unsubstantiated conclusions amount to nothing more than speculation, which does not provide sufficient grounds to forbear from enforcing rate regulation on a dominant carrier.

B. Enforcement of Rate Regulation is Necessary for Protection of Consumers

To forbear from enforcing rate regulation on Bell Atlantic’s special access services, the Commission must find that enforcement of rate regulation is not necessary to protect consumers. Bell Atlantic not only fails to demonstrate that this requirement is satisfied, but it bypasses the requirement entirely. Bell Atlantic claims that for the same reasons rate regulation is not necessary to ensure that rates are just and reasonable, rate regulation is not necessary to protect consumers who purchase these services. BA Petition at 11. Since Bell Atlantic failed to demonstrate lack of market power in the special access services market for the first requirement, its cannot succeed in satisfying this requirement with unsubstantiated arguments that failed the first requirement. Such an analysis of whether Bell Atlantic has satisfied this second requirement for forbearance is academic.

elements free from unreasonable restrictions and delays, and at adequate pricing.

C. Forbearance from Regulation will Harm the Public Interest

The third statutory requirement necessary to warrant Commission forbearance is whether forbearance from regulation of Bell Atlantic's special access rates is consistent with the public interest. 47 U.S.C. § 160(a)(3). Bell Atlantic attempts to satisfy this requirement by arguing that greater price competition will result from the Commission's forbearance. BA Petition at 12. Greater price competition is not feasible when one carrier maintains market power. True, the carrier with market power may offer lower prices to prevent entrance by competing carriers; however, consumers will be harmed in the long run. Without competitors entering the market, consumers will be at the mercy of one carrier who will dictate price, terms, and conditions of service. Furthermore, the inherent benefits of competition, such as, product innovation, customized services would not be forthcoming to consumers. Competition is in the public interest. To forbear from regulating a carrier with market power will be to maintain that carrier's market power and further suppress the advent of competition in that service market.

II. THE REALITY OF THE MARKETPLACE DEMONSTRATES THAT BELL ATLANTIC CONTINUES TO MAINTAIN MARKET POWER IN THE HIGH CAPACITY SPECIAL ACCESS SERVICES MARKET

If a carrier exercises market power in the provision of its services, rate regulation is necessary to ensure that the rates, terms and conditions for that carrier's services are just and reasonable and are not unreasonably discriminatory.⁶ In assessing market power, the Commission looks at several factors including market share, demand and supply elasticity, and a carrier's cost, structure, size and resources. AT&T Non-Dominance Order at 3293. Bell Atlantic cannot prove its claim of non-

⁶ *In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order*, 11 FCC Rcd. 3271 (1995).

dominance without adequately analyzing these factors, which it failed to do. Bell Atlantic's neglect is not surprising when one realizes that application of these factors results in a conclusion that Bell Atlantic continues to be a dominant carrier exercising market power in the high capacity special access services market. Thus, forbearance is not warranted in this case.

A. Market Share

A determination of market share is necessary to conclude whether a carrier has the ability to discriminate and manipulate a service market to the detriment of competition and the public interest. Bell Atlantic attempts to address market share by focusing on DS1 channel equivalent capacity, which alone is simply not enough. Bell Atlantic ignores other key factors such as revenue. Thus, Bell Atlantic's Petition fails to provide a real assessment of market share in the high capacity services market, an analysis necessary to determine market power.

Bell Atlantic's use of DS1 capacity as the primary basis for determining market share enables Bell Atlantic to reach its desired results and to avoid considering other relevant factors, such as revenue, which would provide results more accurately reflecting current market realities. A DS3 channel is equivalent in capacity to 28 DS1 channels. Based on this factor, a CLEC could be providing a customer with one DS3 channel, while Bell Atlantic is providing 28 DS1 channels to 28 separate customers. Bell Atlantic's market share in this case, based on capacity alone, would be 50 percent. But if other factors, such as revenue, are properly considered the results are different. This is particularly significant for purposes of Bell Atlantic's calculations because DS3 channels typically are priced lower than DS1 channels. Thus, if a CLEC is providing a customer a DS3 channel at \$100/month and Bell Atlantic's providing its customers with 28 DS1 channels at \$50/month/per channel, then the CLEC's revenues would be \$100/month and Bell Atlantic's

revenues would be \$1400/month. Based on this analysis, Bell Atlantic's market share would be 86%. Clearly, if capacity alone is used to determine market share, as Bell Atlantic proposes, then the results are skewed. Bell Atlantic's manipulation of data by disregarding other key factors necessary to determine market share results in an unreliable conclusion that the Commission should not rely upon.

Bell Atlantic also refers to its unsubstantiated Quality Strategies Report to support its claim that Bell Atlantic has lost an average of 31.7 percent of the high capacity services market. As discussed above, these calculations cannot be relied upon without supporting documentation and explanation. It is interesting, however, to note that based on Bell Atlantic's unsubstantiated calculations, Bell Atlantic would still control over 68.30 percent of the high capacity services market. Therefore, even if this Bell Atlantic calculation were believed, it clearly shows that Bell Atlantic maintains control over the services in the market in which it requests forbearance. This factor, along with the other factors, such as demand and supply elasticity, clearly demonstrates that Bell Atlantic still holds market power in the high capacity services market.

B. Demand and Supply Elasticity

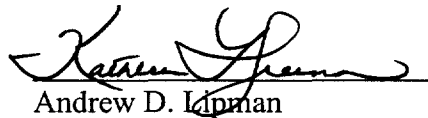
Bell Atlantic fails to establish that there are sufficient elasticities of supply and demand operating throughout its region to justify forbearance. Bell Atlantic consistently claims that high capacity special access service customers have many competitive alternatives to receiving service; however, Bell Atlantic never substantiates these claims with real data demonstrating that competitors can and are serving high capacity customers. Bell Atlantic's failure is not surprising since in reality competitors are still jumping hurdles and breaking down anti-competitive barriers, which prevent competitors from actually reaching and providing service to customers. Bell Atlantic dismisses the

reality that until Bell Atlantic fully opens its markets to competition, current barriers to entry and provisioning will forever prevent competitors from serving customers. As long as competitors are dependent on inadequate provision of OSS, slow or unavailable collocation or provisioning of unbundled network elements ("UNEs"), significant barriers to entry will continue to exist. In addition to the current inability of competitors to *reach and serve* high capacity customers, customers are unable to switch their service provider. Bell Atlantic ignores the fact that termination penalties imposed on special access customers inhibit their ability to switch service providers. While these barriers to entry exist, sufficient elasticities of supply and demand cannot exist. Thus, Bell Atlantic's market power will continue to be preserved and forbearance cannot be realistically viewed in the public interest.

III. CONCLUSION

For these reasons, Network Plus urges the Commission to deny Bell Atlantic's request for forbearance from dominant carrier regulation for provision of high capacity special access services.

Respectfully submitted,



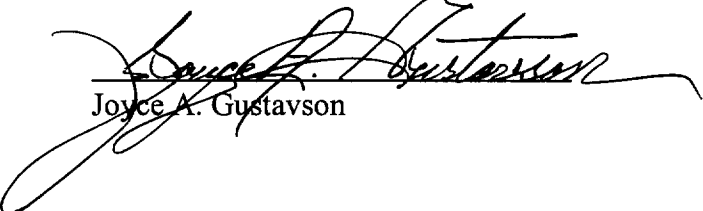
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Dated: March 18, 1999

CERTIFICATE OF SERVICE

I, Joyce A. Gustavson, hereby certify that on this 18th day of March, 1999, I served a copy of the foregoing Comments of Network Plus, Inc. by hand delivery or first-class mail on the following active parties:



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